

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

LAWRENCE RODRIGUEZ, STEVEN J.  
DURAN, GREG MIERA, and ROSE MARIE  
NEAL, On behalf of themselves and other  
Present and former City employees,

Plaintiffs,

v.

No. CIV 07-901 JB/ACT

CITY OF ALBUQUERQUE,

Defendant.

**ORDER**

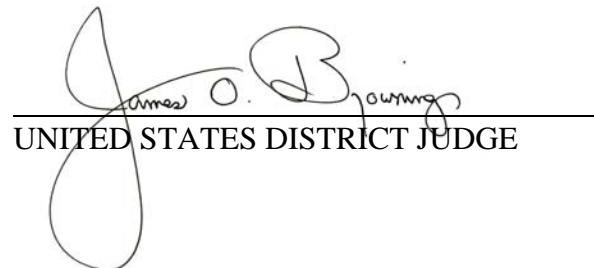
The Court having reviewed the Defendant City of Albuquerque's ("City") Unopposed Motion for Certification of Order for Interlocutory Appeal and For a Stay of All Proceedings (Doc. 82) and the Court finding that: (a) there is a split of District Court authority on the proper divisor for calculation of the "regular rate," (b) there is a split of Federal Appellate Court authority on the issue of inclusion of sale back of benefits in the calculation of the "regular rate," (c) these issues are already on appeal to the Tenth Circuit in a prior case, *Chavez v. City of Albuquerque*, No. CIV 02-0562 JH/ACT (D.N.M.), Nos. 09-2274 & 09-2288 (10th Cir.), and (d) novel issues are presented in this case that are appropriate for interlocutory appellate review, the Court hereby certifies its December 4, 2009 Memorandum Opinion and Order ("Order") (Doc. 81) for interlocutory appeal on the following issues:

1. Whether, in calculating the "regular rate" of pay for City employees under the Fair Labor Standards Act, the City properly divides by the number of hours actually

worked by the employee during the relevant period, rather than by the number of hours in a normal workweek (usually 40).

2. Whether, in calculating the “regular rate” of pay for City employees, the City properly excludes monies paid as buy-back for unused vacation time and sick leave.
3. Whether the City lacked good faith and thus is liable for liquidated damages following the decision in *Chavez v. City of Albuquerque* because it failed to include the proceeds from the annual sale back of vacation and sick leave pay in the calculation of the “regular rate.”

It is hereby ordered that the Order is certified for interlocutory appeal as to the issues set forth above in paragraphs 1, 2, and 3. It is further ordered that all proceedings in this case are stayed in the interest of judicial economy and efficiency pending the interlocutory appeal and decision by the Tenth Circuit.



James O. B. Dowling  
UNITED STATES DISTRICT JUDGE